

Application No. 10/700,142  
Amendment Dated 1/18/06  
Reply to Office Action of 10/3/05

### **REMARKS**

This Amendment is submitted to supplement Applicants' Response mailed on December 5, 2005. Claims 1 and 10 have been amended, and claims 1-18 remain pending in the present application. Applicants' counsel appreciates the courtesy extended by Examiner Chan during the telephone interviews conducted on January 3 and January 17, 2006. In view of the foregoing amendments, as well as the following remarks, Applicants respectfully submit that this application is in complete condition for allowance and requests reconsideration of the application in this regard.

During the telephone interview conducted on January 3, 2006, the Examiner's position set forth in the Advisory Action was discussed. In particular, Applicants' counsel and Examiner Chan discussed that Franklin et al. discloses multiple embodiments of a label applicator system, including the rotary or "flapper" arrangement of Figs. 12-16 and the X, Y, Z slide arrangement of Figs. 21 and 22. Examiner agreed that in the "flapper" arrangement of the Franklin et al. label applicator, the label position is not programmable as recited in each of the pending claims. Examiner also agreed that in the X, Y, Z slide arrangement of the Franklin et al. label applicator, the printed label is not rotated "toward" one side of the article to apply the label thereto as recited in each of the pending claims. Rather, the label is first rotated in a plane parallel to one side of the article (and so not rotated "toward" one side of the article) and then the rotated label is moved in the straight path "toward" the one side of the article through

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movement of the vertical slide to apply the label thereto (see Col. 16, lines 5-6 and Col. 19, lines 41-56).

During the telephone interview conducted on January 17, 2006, Applicants' counsel discussed the Franklin et al. and Soto et al. references with Examiner Chan. In response to Examiner Chan's position that the timing of the label applicator systems disclosed in these two references could be modified to thereby vary the label position on a package, Applicants' counsel discussed with Examiner that such modification would be clearly based on improper hindsight and, in any event, would fail to achieve Applicants' claimed invention as recited in each of the pending claims.

In particular, Applicants' counsel and Examiner discussed that Soto et al. relies on photoeyes or sensors to initiate movement of the rotary label applicator and so it does not appear that any timing parameter could be modified to achieve the hypothetical result sought by Examiner (see Col. 8, line 13 through Col. 9, line 21).

With respect to Franklin et al., Examiner referred to Col. 5, lines 43-47 of that reference which discloses a controller that can be used to control the timing of the transfer of labels from the printer to the pickup point, and for controlling the time of travel of the pad between the pickup point and each of the conveyed articles.

Applicants' counsel discussed with Examiner that this timing parameter appears to be controllable solely for the purpose of changing the speed of the label applicator system

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and certainly does not teach or suggest varying a position of a label on a package based on varying timing data as asserted by Examiner.

Moreover, Applicants' counsel discussed with Examiner that with respect to the "flapper" arrangement of the Franklin et al. label applicator, Franklin et al. clearly does not teach or suggest a programmable control that is "configured to" receive data defining a predetermined label position in combination with a rotary label applicator mechanism as recited in each of the pending claims.

Applicants have amended each of independent claims 1 and 10 to recite the programmable controller is "configured to" receive data defining a predetermined label position, in lieu of "capable of", to clearly positively recite this feature of the claimed invention.

Accordingly, Applicants respectfully submit that each of pending claims 1-18 clearly defines over the prior art of record and the rejections should be withdrawn.

### **Conclusion**


In view of the foregoing response including the amendments and remarks, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If there is any issue that remains which may be resolved by telephone conference, the Examiner is invited to contact the undersigned in order to resolve the same and expedite the allowance of this application.

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Please charge Deposit Account No. 23-3000 in the amount of \$60.00 for the one (1) month extension fee as required by 37 C.F.R. § 1.17(a)(1). If any other fees are deemed necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to Deposit Account No. 23-3000.

Respectfully submitted,

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